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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,233	05/21/2001	Joseph Depaolantonio	CSCO-103808	9945
7590	12/11/2006		EXAMINER	
WAGNER, MURABITO & HAO LLP Two North Market Street, Third Floor San Jose, CA 95113			LEUNG, CHRISTINA Y	
			ART UNIT	PAPER NUMBER
			2613	

DATE MAILED: 12/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SF

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/863,233	DEPAOLANTONIO, JOSEPH	
	<b>Examiner</b>	<b>Art Unit</b>	
	Christina Y. Leung	2613	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 October 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-12 and 20-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3-12 and 20-44 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 17 October 2006 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 9, 12, 32, and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 12 and 35 both recite "said responses to said queries" in the second line of each claim. Similarly, claims 9 and 32 both recite "said received responses" in each claim. However, there is insufficient antecedent basis for this limitation in the claims because claims 1 and 26 on which the claims respectively depend only recite "a response" (singular) to a query, specifically the first query. In other words, although claims 1 and 26 recite a query and a "second query," the claims only recite one response (i.e., the response to the first query).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-12, and 20-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nisbet et al. (US 6,834,304 B1) in view of Tindal (US 2002/0069275 A1).

Regarding claims 1 and 11, Nisbet et al. disclose a method for auditing an optical network (optical communications network 20 in Figure 1), comprising the steps of:  
transmitting a query to a hardware device in the optical network (using auditor 26; column 2, lines 26-28; column 3, lines 26-29; column 4, lines 55-56);  
receiving a response to the query subsequent to the transmitting;

analyzing the response to the query (column 3, lines 65-67; column 4, lines 1-11; column 5, lines 6-19);

producing an audit report of the response and the analysis subsequent to the analyzing wherein the audit report is based on network configuration information and wherein a placement of information in the audit report is based on information contained in the response (column 3, lines 36-44; column 5, lines 20-23; column 6, lines 35-67; see also Appendix A in columns 8 through 11).

Regarding claim 20, as similarly discussed above with regard to claim 1, Nisbet et al. disclose a device for auditing an optical network (auditor 26 in Figure 1), comprising:

a transmitting element and a receiving element coupled to the transmitting element (Nisbet et al. disclose a serial connection and modem through which queries are transmitted and responses are received; column 4, lines 27-30); and

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a computing element, coupled to the receiving element, wherein the device for auditing an optical network is capable of formulating and transmitting queries to devices in the optical network and receiving responses to the queries (column 4, lines 36-51)

wherein queries are transmitted to at least one of the devices, and wherein an audit report of the response that is based on network configuration information is produced, and wherein a placement of information in the audit report is based on information contained in the response (column 3, lines 36-44; column 5, lines 20-23; column 6, lines 35-67; see also Appendix A in columns 8 through 11).

Regarding claims 25 and 34, as similarly discussed above with regard to claims 1 and 20, Nisbet et al. disclose a computer useable medium having computer useable code embodied therein causing a computer to perform operations (i.e. auditor 26; column 4, lines 36-51) comprising:

transmitting a query to a hardware device in the optical network (column 2, lines 26-28; column 3, lines 26-29; column 4, lines 55-56;

receiving a response to the query;

analyzing the response to the query (column 3, lines 65-67; column 4, lines 1-11; column 5, lines 6-19);

producing a report of the response and the analysis; and

wherein an audit report of the response that is based on network configuration information is produced, and wherein a placement of information in the audit report is based on information contained in the response (column 3, lines 36-44; column 5, lines 20-23; column 6, lines 35-67; see also Appendix A in columns 8 through 11).

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Regarding claims 36 and 44, as similarly discussed above with regard to claims 1, 20, 25, and 36, Nisbet et al. disclose a system for auditing an optical network (Figure 1), comprising:

transmitting means for transmitting a query to a hardware device in the optical network and receiving means for receiving a response to the query (Nisbet et al. disclose a serial connection and modem through which queries are transmitted and responses are received; column 4, lines 27-30);

analyzing means for analyzing the response to the query (column 3, lines 65-67; column 4, lines 1-11; column 5, lines 6-19); and

report producing means for producing an audit report of the response, wherein the audit report is based on network configuration information and wherein a placement of information in the audit report is based on information contained in the response (column 3, lines 36-44; column 5, lines 20-23; column 6, lines 35-67; see also Appendix A in columns 8 through 11).

Regarding claims 1, 11, 20, 25, 34, 36, and 44, Nisbet et al. does not specifically disclose transmitting a second query to the hardware device, the second query based on the response to the first query, in order to gather status information of the hardware device.

However, Tindal teaches a system that is related to the one disclosed by Nisbet et al. including a system for auditing an optical network (Figures 2 and 3) wherein queries are transmitted to network elements and responses are received from them (using network manager unit 140; paragraphs [0034], [0042], and [0055]). Tindal et al. further teaches transmitting a first query by polling a hardware device 135 about its status, receiving a response from the network device, analyzing the response to decide what action to take (paragraph [0042]), and

subsequently submitting a second query to resolve problems detected by the first/earlier query (paragraphs [0042], and [0055]).

Regarding claims 11, 34, and 44 in particular, Tindal further teaches that the second/subsequent query is determined by database reference to the hardware type of the hardware device (paragraph [0054]).

Regarding claims 1, 11, 20, 25, 34, 36, and 44, it would have been obvious to a person of ordinary skill in the art to transmit a second query based on the response to the first query, as taught by Tindal et al. in order to further monitor and respond problems in the network device. Examiner notes that Nisbet et al. already disclose transmitting a first query and receiving a corresponding response. One in the art would have been particularly motivated to include transmitting this second query in the system disclosed by Nisbet et al. since the system is already directed finding problems in the network so that they may be promptly resolved (Nisbet et al., column 7, lines 1-14).

Regarding claims 3, 23, 26, and 37, Nisbet et al. disclose that the report includes “recommendations” associated with the management of the network in the sense that the report especially highlights parameters that are invalid and marks them as unusual “findings” that the user should correct; the report also includes/recommends “an indication of the expected valid operational range” (column 5, lines 6-23; column 6, lines 15-60).

Regarding claims 4, 24, 27, and 38, Nisbet et al. disclose that at least a portion of the network is implemented as a DWDM optical network (column 3, lines 65-67; column 4, lines 25-34; Appendix A also generally discloses “DWDM” transmitters).

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Regarding claims 5, 28, and 39, Nisbet et al. disclose that the hardware device is a portion of the network's infrastructure (column 4, lines 25-34).

Regarding claims 6, 29, and 40 Nisbet et al. disclose that the hardware device is a DWDM device (column 4, lines 25-34; Appendix A also generally discloses "DWDM" transmitters).

Regarding claims 7, 9, 30, 32, 41, and 42, as well as claims 9 and 32 may be understood with respect to 35 U.S.C. 112 discussed above, Nisbet et al. discloses that transmitting the transmitted first query and receiving of the received response is accomplished entirely within the optical network. Also, the transmitting of first and second queries and receiving responses as taught by Tindal is also accomplished within the optical network of the system suggested by Tindal. Thus, in the system suggested by the combination of Nisbet et al. in view of Tindal as discussed with regard to the independent claims, the transmitting and receiving is accomplished entirely within the optical network.

Regarding claims 8 and 31, Nisbet et al. disclose that the transmitted queries are generated by a dedicated network audit device (i.e., auditor 26).

Regarding claims 10, 33, and 43, Nisbet et al. disclose that the first query requests information related to the part number and location in the optical network of the hardware device (column 6, lines 51-55).

Regarding claims 12 and 35, as well as the claims may be understood with respect to 35 U.S.C. 112 discussed above, Nisbet et al. disclose a further step of analyzing the response to the query is performed by automated intelligent decision-making (column 5, lines 6-14).

Similarly, regarding claim 21, Nisbet et al. disclose that the device is further capable of automatically analyzing the responses to the queries (column 5, lines 6-14).

Regarding claim 22, Nisbet et al. disclose that the device is further capable of presenting the results of the automatic analyzing in a user-readable format (column 6, lines 35-50).

***Response to Arguments***

6. Applicant's arguments with respect to claims 1, 3-12, and 20-44 have been considered but are moot in view of the new ground(s) of rejection.

Examiner notes that in the previous Office action, rejections of the claims were made relying on a combination of "Tindal in view of Nisbet et al." while in the present Office action, the rejections rely on a combination of "Nisbet et al. in view of Tindal" as discussed in detail above. Examiner respectfully notes that the new grounds of rejection (now based on Nisbet et al. as the primary reference in the combination) is made in response to Applicant's amendments to the claims including further limitations regarding the audit report recited.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Y. Leung whose telephone number is 571-272-3023. The examiner can normally be reached on Monday to Friday, 6:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on 571-272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Christina Y Leung*  
CHRISTINA LEUNG  
PRIMARY EXAMINER